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C O N F I D E N T I A L MUNICH 000062

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ERSENBAUM, HOMELAND SECURITY FOR ICE

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TAGS: [GM](#) [OPDC](#) [PREL](#)
SUBJECT: THE PROSECUTION OF JOHN DEMJANJUK

REF: A) SECSTATE 22883 AND B) EMAIL OF MARCH 18 OF
MEDICAL REPORT

Classified By: Consul General Eric Nelson for reasons 1.4 b and d

11. (C) Summary: Consulate General Munich and Embassy Berlin have actively pursued Washington goals with regard to the removal to Germany and prosecution of John Demjanjuk by German authorities. The German Federal Government has agreed to act on the arrest warrant issued by the Munich State Prosecutor, and we understand that action rests at present with Washington agencies, in coordination with the German Embassy. This cable outlines the principal steps taken by Mission Germany in response to Washington instructions. End summary.

12. (C) On March 11, Acting Consul General Traub at ConGen Munich spoke with Dr. Hans-Joachim Lutz, public prosecutor section chief ("Staatsanwalt als Gruppenleiter") regarding the prosecution of John Demjanjuk. Lutz is the lead prosecutor in this case. He said that his office had just issued an arrest warrant for John Demjanjuk following a long investigation. The March 11 press release of the Prosecutor's Office follows at paragraph 8. We spoke with Prosecutor Lutz again on March 12 to follow up on this news and to share with him the points from REFTEL. Lutz warmly appreciated the offers of support from Washington and ConGen Munich. He confirmed that he planned to travel to Washington on March 31 to meet counterparts regarding this case. We reiterated that it is very important from Washington's perspective that the German authorities move as quickly as possible to do what is necessary to open the door for Demjanjuk to travel to Germany. Lutz replied that the matter was now out of the hands of the Munich Prosecutors, Office since their warrant was with the Federal Ministries of Interior, Justice, and Foreign Affairs for processing. He expressed the view that Washington would know what is happening faster than he would. He added that it was his understanding that the German Federal Cabinet could take a final decision on the matter either "next week or in two weeks."

13. (C) Separately, we raised the case with Michael Hoehenberger, Policy Planning Chief at the Bavarian Staatskanzlei, during a meeting on other matters on March 12. He was not aware that Munich had issued the arrest warrant and agreed that the matter was very important for Bavaria for legal, moral, and historic reasons. On his own initiative, he later raised the matter with Bavarian Minister of Justice Beate Merk, who is bureaucratically the senior responsible official for the Munich Prosecutor's office. He told us later that Merk had expressed her full support for the course the Munich prosecutors were taking and that the United States should not hesitate to contact her if there were something she could do to support the matter.

¶4. (C) Berlin Political Minister-Counselor consulted with the Legal Department of the Federal Foreign Office on March 12 and 13 for updates on interagency discussions between the Foreign Office and Interior Ministry on the Demjanjuk arrest warrant. Those updates were shared with Washington agencies by e-mail. The Foreign Office informed the Embassy March 13 on an informal basis that German authorities agreed to allow Demjanjuk to enter Germany and that the German Embassy in Washington would be the official channel of communication with USG agencies on further steps. Mission Germany has kept informal channels of communication open with the Germans both in Berlin and Munich.

¶5. (C) Two issues were noted to Embassy Berlin as topics of German interagency discussion: a) what kind of American travel document would serve as the basis for admitting Demjanjuk into Germany; and b) what would happen if Demjanjuk were brought to Germany but then were found incapable of standing trial or were acquitted. (Note: Acting Consul General Traub floated the last point on March 13 with Hoehenberger when he called. He quickly replied that Germany & had a moral obligation to deal with this issue.⁸ What would happen to Demjanjuk after an acquittal or if he could not stand trial should be a question for another day, he suggested. End Note.)

¶6. (C) On March 18, Munich Prosecutor Lutz sent the Consulate a copy of a medical report from Demjanjuk's doctor in Ohio (REFEMAIL scanned and forwarded by email to DOS, DOJ, and DHS/ICE representative in Frankfurt the same day.) In an effort to stay coordinated, ConGen Pol/Econ officer will have a courtesy call with Prosecutor Lutz on March 23 to thank him for his cooperation to date.

¶7. (SBU) Embassy Berlin and Consulate General Munich have discussed a media approach for this case and are prepared to team with DOS, DOJ, and DHS on a coordinated press line when the removal happens. This will be a high-profile case in Germany.

¶8. (U) BEGIN TEXT OF TRANSLATION OF PRESS RELEASE FROM THE MUNICH PROSECUTORS OFFICE

Munich, March 11, 2009

The Senior Public Prosecutor
Munich I

Preliminary Proceedings against John DEMJANJUK for Assisted Murder

Press Release of the Prosecutor's Office of Munich I

On March 10, 2009, upon the request of the Prosecutor's Office of Munich I, the investigative judge of the Munich Local Court ordered an arrest warrant against the defendant John DEMJANJUK. There is strong suspicion that the defendant served as a guard from 3/27/1943 until late September 1943 at the extermination camp of Sobibor (now Poland) and that in this capacity he assisted the murder of at least 29,000 persons of the Jewish faith.

The request to order an arrest warrant became possible after the U.S. "Office of Special Investigations" provided the identity card No. 1393, the authenticity of which was examined by the Bavarian Land Criminal Office. In a written expertise, the office stated that the identity card matched the sample material and was therefore authentic.

The defendant currently still lives in the U.S. Further investigations will follow in order to adequately prepare expected court proceedings.

The federal government has been informed about the arrest warrant. The next steps of the Prosecutor's Office of Munich I will be in close coordination with the federal government.

As soon as the defendant is in Germany, it is planned to arraign the defendant and presumably charge him before the jury of the Land Court Munich II for assisted murder in 29,000 cases.

(signed) Noetzel

19. (U) Consulate General Munich and Embassy Berlin coordinated on this cable.
NELSON